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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6
7 JON GREGORY SANCHEZ,

8 Plaintiff,

9 vs.

10 ROBERT ELIZONDO et al.,

11 Defendants.
12

3:15-cv-00474-RCJ-VPC

ORDER

13 This is a Petition to vacate an arbitration award made by the Financial Industry
14 Regulatory Authority (“FINRA”).

15 **I. FACTS AND PROCEDURAL HISTORY**

16 On April 29, 2014, Defendant Robert Elizondo brought a claim against Plaintiff Jon
17 Sanchez before FINRA arising out of Sanchez’s alleged mismanagement of Elizondo’s
18 investment portfolio (“the Complaint”). (*See* Pet. 1–2, ECF No. 1). The arbitrator awarded
19 Elizondo \$75,000, exclusive of interest, fees, and costs (“the Award”) on August 14, 2015. (*See*
20 *id.* 2–3; Award, ECF No. 1-3). Sanchez filed the Petition in this Court on September 17, 2015,
21 asking the Court to vacate the Award for various reasons. Elizondo answered and pled a
22 Countermotion to confirm the Award. Elizondo moved to dismiss the Petition for untimeliness.
23 FINRA separately moved to dismiss based on immunity. The Court denied Elizondo’s motion
24 but granted FINRA’s. The Court then granted the Petition and denied the Countermotion,

1 finding that the arbitrator committed error by proceeding with a single arbitrator over Plaintiff's
2 objection in violation of FINRA Rule 12401(c), which requires a three-arbitrator panel where a
3 claim exceeds \$100,000, and Respondent had requested more than \$100,000 in a pre-hearing
4 brief. The Court of Appeals reversed, ruling that the arbitrator's interpretation of the FINRA
5 rule was not completely irrational, because "the amount of the claim" could be read to mean the
6 amount in the Complaint versus the amount sought at the hearing. The Court of Appeals
7 remanded for a determination on the remaining grounds in the Petition.

8 **II. DISCUSSION**

9 The remaining grounds are: (1) whether the Arbitrator exceeded his powers by failing to
10 apply Nevada law on the statute of limitations; and (2) whether the Arbitrator refused to consider
11 the evidence or follow the law by awarding damages when the loss was caused other than by
12 Petitioner's malfeasance.

13 **A. The Statute of Limitations**

14 Petitioner notes that FINRA Rule 12206(a) establishes a six-year limitations period to
15 arbitrate a claim running from the occurrence of the event giving rise to the claim. Petitioner
16 argues, however, that FINRA Rule 12206(c) notes that subsection (a) does not extend any
17 applicable statute of limitations. Petitioner argues that the claims sound in securities fraud,
18 breach of fiduciary duty, negligent misrepresentation, and contractual bad faith, and that
19 Nevada's limitations period for those claims are two years, three years, four years, and four
20 years, respectively. These time periods all ran no later than March 2014, but Respondent filed
21 the Complaint in April 2014.

22 But even assuming the rule functions as Petitioner argues—and there is no evidence the
23 Arbitrator believed this was the case yet manifestly disregarded the rule, which is enough to
24 confirm—the Award indicates "breach of contract" as one of several bases for Respondent's

1 claim, (Award 1), and the statute of limitations for a breach of a written contract in Nevada is six
2 years. Nev. Rev. Stat. § 11.190(1)(b). The Arbitrator did not explicitly address the statute of
3 limitations in the Award, and the record does not make clear that the Arbitrator believed the
4 claims were all barred yet manifestly disregarded the law, whether as to interpretation of the
5 FINRA Rule or application of Nevada law.

6 **B. Failure to Consider Evidence or Follow the Law**

7 Petitioner argues that the Crash of 2008 and Respondent's demands to continue to trade
8 aggressively were the cause of Respondent's losses, not any acts or omissions by Petitioner, and
9 that the Arbitrator ruled irrationally in finding to the contrary. Although the Court may or may
10 not have ruled the same way, there is no evidence the Arbitrator ruled completely irrationally or
11 showed a manifest disregard for the law, as opposed to having simply erred, no matter how badly
12 (if he did). *See Kyocera Corp. v. Prudential-Bache Trade Svcs., Inc.*, 341 F.3d 987, 997–99 (9th
13 Cir. 2003). Anyway, Respondent notes that the law cited now on causation was not argued to the
14 Arbitrator, and there is no evidence the Arbitrator agreed with Petitioner on the causation issue
15 but consciously disregarded the law and facts to rule to the contrary.

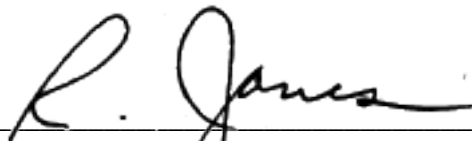
16 **CONCLUSION**

17 IT IS HEREBY ORDERED that the Petition to Vacate (ECF No. 1) is DENIED, and the
18 Counter-motion to Confirm (ECF No. 7) is GRANTED.

19 IT IS FURTHER ORDERED that the Clerk shall enter Judgment and close the case.

20 IT IS SO ORDERED.

21 Dated this 7th day of August, 2018.

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23 
24 ROBERT C. JONES
United States District Judge